

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:06-CR-63-BR

UNITED STATES OF AMERICA

v.

COLLIER DOUGLAS SESSOMS

ORDER

This matter is before the court on defendant's motion for review of his sentence pursuant to 18 U.S.C. § 3742 and for appointment of counsel. (DE # 130.) Because § 3742 pertains to review of a sentence on appeal from the district court to the court of appeals and defendant suggests that his sentence violates the terms of his plea agreement, the court construes defendant's challenge to his sentence as one under 28 U.S.C. § 2255. See United States v. Crump, No. 7:06CR00007-1, 2017 WL 4707025, at *1 (W.D. Va. Oct. 19, 2017) (where the defendant alleged he was improperly sentenced under the career offender guideline, the court construed a § 3742 motion as a 28 U.S.C. § 2255 motion). Because defendant has previously filed a § 2255 motion, defendant must first seek authorization from the Fourth Circuit Court of Appeals before this court can consider the motion. See 28 U.S.C. §§ 2244(b), 2255(h). The motion is DISMISSED WITHOUT PREJUDICE. The court finds that defendant has not made "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and

therefore, a certificate of appealability is DENIED.

This 2 October 2018.



W. Earl Britt
Senior U.S. District Judge